

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** March 8, 1995

**TO:** William C. Schaub, Regional Director, Region 7

**FROM:** Robert E. Allen, Associate General Counsel, Division of Advice

**SUBJECT:** North Oakland Medical Centers, Case 7-CA-36596

This Section 8(a)(5) case was submitted for advice on whether the Employer was privileged to withdraw recognition from a professional unit of 300 registered nurses because they are supervisors under Health Care. [\(1\)](#)

We conclude, in agreement with the Region, that the RNs are not Section 2(11) supervisors. [\(2\)](#) The Employer alleges that the RNs engage in day-to-day supervision of the Employer's 200 LPNs and other ancillary patient care personnel. However, the Region's investigation disclosed that the staff RNs clearly do not possess any of the traditional criteria of supervisory authority.

Concerning Health Care, the Region's investigation also disclosed that staff RNs spend virtually all their work time in direct patient care and are not involved in the assignment or direction of work of other patient care employees. To the extent that a staff RN may occasionally direct the work of an ancillary employee, such direction clearly is only that kind of "routine" technical assistance commonly given by lead persons. In any event, staff RNs clearly do not "responsibly direct" other employees using "independent judgment." [\(3\)](#)

The Employer also alleges that the staff RNs act as Charge Nurses (CNs), on a rotating basis, receiving premium pay to responsibly direct other employees including other staff RNs. However, the Region's investigation disclosed that many staff RNs never work as CNs, particularly in the smaller hospital units where the RNs instead mutually decide matters normally left to a CN. Where staff RNs do work as CNs, at varying times from three or four times a week to only once or twice a month, the CNs' duties may include (1) assigning patients to the RNs and then "very infrequently" adjusting these assignments during the shift; (2) settling RN disputes over patient assignments; and (3) securing replacement RNs.

Concerning the CNs' assignment and reassignment of patients to RNs, CNs spend only five to ten minutes at the beginning of their 12 hour shift making initial assignments. CNs assign patients based on patient acuity, the level of patient care required, and the number of RNs on duty. We conclude that patient assignments are "routine" since the CN is merely with balancing the work load among RNs who largely possess the same skills. [\(4\)](#)

Concerning the settling of disputes over patient assignments, the RN/CN who noted that she has settled RN assignment disputes also noted that any RN who was dissatisfied with her decision could go to the RN supervisor, the Nurse Manager, or the House Director. Thus, there is no evidence that CNs effectively settle patient assignment disputes. Finally, the RN/CN who discussed securing a replacement RN for an RN who called in sick did not state that she was required to attempt to secure a replacement, nor that she had any authority to require a replacement RN to come in during his/her off shift.

The Employer admits that those RNs who do serve as CNs do so on a rotating basis. Since all RNs perform CN duties, either on a rotating basis or as a result of a collaboration with all other RN's [\(5\)](#), we conclude that CNs exercise no independent judgment in performing CN tasks.

Finally, the Employer's contention that all the RNs are supervisors is belied by the presence of other supervisory and managerial personnel who actually supervise the RNs. Even during the evening shift, many of the hospital units are supervised by a nurse supervisor, who is overseen by the House Director. In addition, some hospital units are staffed almost entirely by staff RNs. Concluding that all staff nurses are supervisors would create a distorted ratio of supervisors to employees. See McAlester General Hospital, 223 NLRB 589 (1977).

R.E.A.

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<sup>1</sup> NLRB v. Health Care & Retirement Corp., \_\_U.S.\_\_, 114 S.Ct. 1778, 146 LRRM 2321 (1994).

<sup>2</sup> Since the Employer has withdrawn recognition, the Region should consider the need for Section 10(j) relief.

<sup>3</sup> See the General Counsel's brief in Providence Hospital, Case 19-RC-12866 and Ten Broeck Commons Nursing Home, Case 3-RC-10166, filed October 24, 1994.

<sup>4</sup> The "routine" nature of patient assignments is further demonstrated by the fact that patient assignments are often simply continued from shift to shift, and that in small hospital units where no CN is designated, the RNs simply agree among themselves upon patient assignments at the start of the shift.

<sup>5</sup> See National Broadcasting Co., 160 NLRB 1440, 1442 (1966) (non-health care case finding rotating "deskmen" not to be supervisors where, inter alia, five of six newsmen "regularly perform work as deskmen and as newsmen under deskmen").